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Paper No. 43

**THEODORE J BIELEN JR
BIELEN PETERSON & LAMPE
1991 N CALIFORNIA BLVD
SUITE 720
WALNUT CREEK CA 94596**

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JUL 15 2005

OFFICE OF PETITIONS

In re Application of	:	
Webber, Robert	:	
Application No. 08/833,506	:	ON PETITION
Filed: April 7, 1997	:	
Attorney Docket No. 14291	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed March 1, 2004, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

This application became abandoned for failure to timely reply to the final Office action mailed October 30, 2002. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, this application became abandoned on January 31, 2003. A Notice of Abandonment was mailed June 4, 2003.

A grantable petition under 37 CFR 1.137(b) must be accompanied by:

- (1) the required reply,
- (2) the petition fee,
- (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, and
- (4) a terminal disclaimer and fee if the application was filed on or before June 8, 1995 or if the application is a design application.

Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information.²

¹ In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

The instant petition lacks item (1). Although an RCE, along with the submission, was properly submitted, the fee was incorrect. Petitioner only submitted \$2050.00 in total, \$1330.00 of which is for payment of the petition fee. The large entity RCE fee was \$770.00 at the time the petition was filed. However, the RCE fee is determined by the date it is submitted in total. The large entity fee is now \$790.00. Accordingly, an additional \$70.00 is required to revive the above-identified application.

The Finance Office attempted to collect the additional money from petitioner's deposit account. However, there does not appear to be enough funds in the account to cover the amount stated above.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITIONS
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: Customer Window located at:

U.S. Patent and Trademark Office
Customer Service Window Randolph Building
401 Dulany Street
Alexandria, VA 22314

By fax: (571) 273-8300
ATTN: Office of Petitions

Any questions concerning this matter may be directed to the undersigned at (571) 272-3206.



Liana Chase
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

² See MPEP 711.03(c)(III)(C) and (D).